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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1998

ESTATE OF DAVID MILLER
FRED DAVIS
GERTRUDE DAVIS GOROD

Petitioners,

v.

EDITH TABACHNICK

Respondents.

Petition For Writ Of Certiorari
To The Massachusetts Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

Fred Davis
Gertrude Davis Gorod
353 Bryant Street
Malden, Massachusetts 02148
(781) 322-8223

54 pp

BEST AVAILABLE COPY

ISSUES PRESENTED

I.

Should this Court Grant Certorari to protect the petitioners' rights as set forth in the United States Constitution Amendment I: which "allows the freedom to exercise their religion".

II.

Protect the petitioners' rights as set forth in the United States Constitution Amendment V: "cannot be deprived of life, liberty or property without due process of law".

III.

Protect the petitioners' rights as set forth in the United States Constitution Amendment XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty or property without due process of law: nor deny to any person within its jurisdiction the equal protection of the law".

IV.

Protect the petitioner' rights as set forth in the Civil Rights "individuals can not be

discriminated because of the age and religion.

V.

Massachusetts Civil Rights Act, M.G.L. Chapter 12 § 111 protects citizens from being deprived of their United States Constitutional Rights by individuals and allows the filing of a Civil Action against these parties.

VI.

Massachusetts Declaration of Rights: Article XI: remedy by recourse of the laws; obtaining of right and justice, completely promptly. "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character, He ought to obtain right and justice freely, and without being obliged to purchase it: Completely, and without denial: promptly and without delay:...."

VII.

Massachusetts Rules of Civil Appellate Procedure Rule 3 states in pertinent part: "Filing Notice of Appeal. An appeal permitted by law from the lower court shall be taken by filing a notice of appeal with the clerk of the lower court....."

VIII.

Crimes Against the Elderly Massachusetts General Laws Chapter 19A § 14 "Financial Exploitation: "an act or omission by another person, which causes a substantial monetary or property loss to an elderly which gain would otherwise benefit the elderly.

IX.

Joseph S. Provanzano (Edith Tabachnick's 5th attorney) and Associates has filed another frivolous action in the Bristol County Court in Taunton, Massachusetts and the Bristol County is again refusing to honor the petitioners' Notice of Appeals and again is continuing to refuse to assemble the record and forward it to the Appeals Court. Compelling the petitioners to go through the same legal process again.

Joseph S. Provanzano, Provanzano & Associates have violated the Massachusetts Canon Rules and the Massachusetts Attorney's Oath General Laws 211 section 38 "You (name) solemmly swear that you will do no falsehood, nor consent to the doing of any Court". Mr. Provanzano and Paul Derby told falsehoods to the Court engaged in conduct involving dishonesty, fraud, deceit and misrepresenting the facts to the Court.

X

Based on the facts and evidence Judges LaStaiti, McGregor and Jones, they are engaged in a conspiracy to hurt, harm and deprive petitioners of their rightful inheritance.

This conspiracy is fortified when petitioners were deprived of their freedom to exercise their religion.

In additional this conspiracy deprived the petitioner, Gertrude Davis Gorod the right to depose the respondent, Edith Tabachnick which is a direct violation of the petitioner's right under Massachusetts Rules of Civil Procedure Rule 26 (a) "parties may obtain discovery by one or more of the following methods: (b) depositions upon oral examinations....."

XI.

The Massachusetts Supreme Judicial Court erred in its decision based on the facts, evidence and oral argument.

In addition, the Clerk erred in allowing respondent's attorney to file briefs seven months after the filing due date.

XII.

The Public Interest is involved, as the Massachusetts lower and inferior Courts are out of control and individuals in Massachusetts are being deprived of their rights as set forth in both the United States and Massachusetts Constitutions with other Federal and State statutes.

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Petitioners, Fred Davis and Gertrude Davis Gorod, respectfully prays that a writ of certiorari issue to review decision of the Massachusetts Supreme Judicial Court and grant them the following: 1. Dismiss the frivolous action that was filed by respondents's attorneys Joseph s. Provanzano and Paul Derby in the Bristol County Probate & Family Court Docket No. 960055-PP. 2. Sanctions Against Edith Tabachnick for posing as an heir to the Estate of David Miller. 3. Respondent, Edith Tabachnick be ordered to return all items, she stole from the Estate of David Miller. 4. Sanctions Against Robert E. Peck Register and Toni, Head Clerk, of the Bristol County Probate & Family Court for refusing to accept Notices of Appeals and refusing to assemble the record and forward to the Appeals Court. 5. Sanctions against Judges LaStaiti, McGregor and Jones for knowingly and wilfully violated petitioners' United States Constitutional Rights, State Constitutional Rights along with Massachusetts Rules of Court and Statutes and any other relief the Honorable Court deems appropriate.

OPINIONS BELOW

There was no written decision from Compelling Continuance of Hearing because of the Jewish Holiday "the within Motion is Denied" App. 1 and App. 2.

There was no written decision on Petitoners' Motions for Change of Venue for Reason of Local Prejudices App. 10 & App. 11. Judge Prudence McGregor in open court denied these motions.

There was no written decison from Judge LaStaiti pre-trial conference when neither the respondent, or her attorneys Joseph Provanzano and Paul Derby failed to appear for pre-trial Conference although there was a court order stating "All trial counsel and parties shall attend the pre-trial conference, Failure of counsel to appear at any scheduled pre-trial conference or otherwise to comply with provisions of this order will result in the composition of such sanctions as the Court may deems appropriate " App. 9. Petitioners at this pre-trial conference argued for sanctions against the attorney for failure to attend, however, there was no ruling from the judge on this issue.

There was no ruling on Petitioner, Gorod's Motion To Dismiss the Action or an Alternative Compel Edith Tabachnick to Be Deposed, Duces Tecum and Costs.

There was no written decision from the Appeals Court but merely a statement "Denied".

There was no written decision from the single justice. Petitioner Gorod telephoned the office to find out if he allowed the Continuous of the hearing because of the Jewish Holiday, Gorod was informed it was denied and she had to be in court on that day

Massachusetts Supreme Judicial Court Order

attached App. 17-20

JURISDICTION

July 17, 1998, The Massachusetts Supreme Judicial Court order.

This petition is filed within the 90 days of the Massachusetts Supreme Judicial Court's decision.

This Court's jurisdiction is invoke under 28 United States Code.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides "allows the freedom to exercise one's religion".

The Fifth Amendment to the United States Constitution provides in pertinent part: "cannot be deprived of life, liberty, or property, without due process of law".

The Fourteenth Amendment to the United States Constitution Provides: "All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, with-

out due process of law: nor deny to any person within its jurisdiction the equal protection of the law".

STATEMENT OF THE CASE

This is another continuing frivolous action filed by the respondent, Edith Tabachnick, her attorneys Joseph S. Provanzano and Paul Derby.

The respondent, Edith Tabachnick is not a legal heir to the Estate of David Miller. She is a member of a religious cult posing as an heir to the Estate of David Miller.

The respondent, Tabachnick after the funeral of the late David Miller, broke into his late residence and removed $250,000. in items belonging to the petitioner, Gertrude Davis Gorod, one of the legal heirs to the Estate of David Miller.

Respondent, Tabachnick also removed other items from the estate in the amount of over a million dollars and these items were taken over state lines.

Attorney Mark Berch wrote to the respondent, Tabachnick's first attorney regarding the items that she removed from the Estate of David Miller App. 16, however, it was to no avail. She did not return anything.

Because of these frivolous actions the petitioner, Gorod has spent her life savings to defend these actions and is now compelled to

act pro se.

Mr. Provanzano with malice has slandered, harassed, abused, embarrassed, the petitioners causing damage to their character, reputation casing them both physical and emotional distress.

Mr. Provanzano has made falsehoods to the courts violating the Canon Rules and the Massachusetts Attorney's Oath with the actual intent to deceive the Court and obstruct justice.

Petitioners filed Defendants' Compelling continuance of Hearing attached App. 1 & 2 because of the Jewish Holiday which was denied by Judge Jones.

July 29, 1997, petitioners sought the help to continue the hearing to Chief Justice Wilkins. Petitioner's letter was referred to Robert S. Bloom who informed her that her letter was forwarded to the Aministrative Office of the Probate and Family Court Department attached App. 5.

September 18, 1997, petitioners wrote to Mary C. Fitzpatrick, Chief Justice of the office of the Administrative Office of the Probate and Family Court Department in order that they could obtain the freedom to exercise their religion attached app. 7. There was no response from her.

Petitoner, Gorod filed a Notice of Taking Deposition of Edith Tabachnick and Duces Tecum which was served upon both the respondent, Tabachnick and her attorney Joseph S. Provanzano.App. 8. However, she did not appear for her deposition.

The petitioner was not notified that she would not appear by either the respondent Tabachnick nor her attorney Joseph S. Provanzano.

The petitioner Gertrude Davis Gorod filed Motion to Dismiss the Action or As An Alternative Compel Edith Tabachnick to Be Deposed, Duces Tecum and Costs. The Court did not rule on this motion attached App. 12.

There was a Court Order which stated in pertinent part: "All trial counsel and parties shall attend the pre-trial conference. Failure of counsel to appear at any scheduled pre-trial conference or otherwise to comply with provisions of this order will result in the composition of such sanctions as the Court may deem appropriate" attached App. 9.

Respondent's attorney's did not appear at the pre-trial.

Petitioners' argued for Sanctions against the attorney Judge LaStaiti did not place any sanctions of the respondent's attorneys.

Petitioners filed Notices of Change of Venue For Reason of Local Prejudices attached App. 11& 12. This motion was denied by Judge McGregor.

Petitioners filed Notice of Appeals in the Bristol County Probate and Family Court which were mailed to Robert E. Peck, Register copies were also sent to Chief Justice Herbert Wilkins Chief Justice of Probate Mary Fitzpatrick attached App. 3 & 4. These Notices of Appeals were returned to the petitioners by Robert E. Peck, Register.

Petitioners brought the Notices of Appeals

personally to the Bristol County Probate & Family Court, however, Toni, Head Clerk in the Court refused to accept petitioners Notice of Appeals.

August 1, 19997, petitioners filed Motion To Compel Assemble of the Record To The Appeals Court attached App. 20.

In addition, the petitioners outlined in a letter to Chief Justice Mary Fitzpatrick that Bristol Probate and Family Court was refusing to assemble the record and forward it to the Appeals Court along with a copy of the petitioners Motion to Compel Assemble of the Record to the Appeals Court attached App. 6.

There was no response from Chief Justice Mary Fitzpatrick.

Both Robert E. Peck and Toni, Head Clerk of Bristol County Probate & Family Court refused to Assemble the Record and forward to the Appeals Court.

Petitioners appealed to a single justice in Appeals Court and requested a review before the full panel, both were denied.

Petitioners appealed to the single justice in the Massachusetts Supreme Judicial Court, this appeal was denied without a hearing.

Petitioners appealed to the full board of the Massachusetts Supreme Judicial Court and their briefs and appendices were filed on November 18, 1997.

Seven months after the due date of the filing of the respondents briefs, Jean M. Kennett,

Clerk of the court, allowed the respondent's attorney Joseph S. Provanzano to file briefs granting him the right to oral argument.

After hearing oral arguments the Massachsetts Supreme Judicial Court rendered its decision.

Petitioners upon reading the Court's decision found that it erred in its decision based on the facts and evidence.

Now the issues are before this Honorable Court to grant Petition For Writ of Certiorari.

ARGUMENT

REASONS FOR GRANTING THE PETITION

I. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONERS FROM BEING DEPRIVED OF THEIR CONSTITUTIONAL RIGHTS AS SET FORTH IN THE UNITED STATES CONSTITUTION

United States Constitution - Amendment I: which states in pertinent part: "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof"

The Courts in the state of Massachusetts deprived the appellants the right to have freedom to exercise their religion.

Petitioners needed a Continuance of a Hearing because of a Jewish Holiday to exercise their religious beliefs.

September 18. 1997, Petitioners filed Defendants Compelling Continuance of Hearing with Robert E. Peck, Register and copy was sent to Mary Fitzpatrick, Chief Justice of the Probate & Family court

attached App. 1 & 7.

This was the first time for a continuance, that was needed by the petitioners because of their religion, after seven years of continuing frivolous actions filed by the respondent and her five attorneys.

In, addition the petitioners were unable to have their witnesses present at the hearing, due to the fact, that their witnesses were of the jewish faith and were unable to be present in the court because of the Jewish Holiday.
The Massachusetts Courts knowingly and wilfully deprived the petitioners of their United States Constitutional Right to the freedom to exercise their religion.

THE UNITED STATES CONSTITUTION AMENDMENT V: states in pertinent part: "cannot be deprived of life, liberty, or property without due process of law" .

Robert E. Peck, Register returned the petitioners Notices of Appeals attached App. 3 & 4.

Robert E. Peck, Register refused to assemble the record and forward the record to the Appeals Court, inspite of the fact, that the petitioners served upon him Motions Compelling him to assemble the record and copy to Chief Justice Mary C. Fitzpatrick attached App. 6 & 20.

Neither party assembled the record and forward it to the Appeals Court.

Petitioners were being deprived of their inheritance without due process of law.

THE UNITED STATES CONSTITUTION ADMENDMENT XIV: section states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof,are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person life, liberty or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws".

The State of Massachusetts and their servants, Robert E. Peck, Register and Toni, Head Clerk, deprived the petitioners their Constitutional Rights to due process of law and equal protection of the law by refusing to accept Petitioners' Notices of Appeals and refusing to assemble the record and forward the record to the Appeals Court.

Petitioners Constitutional Rights are still being violated by both Robert E. Peck, Register and Toni, Head Clerk. In addition, Sean M. Dunphy, Chief Justice of the Probate & Family Court Department is also depriving the petitioner due process of law when he returned Fred Davis' Additional Claim Against The Estate of David Miller which was also returned by Robert E. Peck and not accepted by Toni, Heard Clerk.

June 9, 1998, Petitioner Fred Davis paid both 1998 Real Estate and water bills for the Estate of David Miller in the combined amount of $1,817.21. Petitioner, Fred Davis at the present time has a total claim against the Estate of David Miller in the amount of $27,594 for Real Estate Taxes, water bills, etc. Petitioner

submitted to the Court paid real estate bills, water bills and petitioner Davis' affidavit. Toni would not accept these documents, petitioner Davis' mailed these documents to both Robert E. Peck and Sean M. Dunphy, Chief Justice of the Probate & Family Court Department documents were returned to the petitioner by both of these individuals.

Therefore, the petitioners' Constitutional Rights are wilfully and with malice are being violated continuously by the Commonwealth of Massachusetts and their servants.

II. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONERS CIVIL RIGHTS AS THEY WERE DISCRIMINATED AGAINST BECAUSE OF THEIR AGE AND RELIGION

Petitioners were deprived of their Civil Rights when they were discriminated against because of their age and religion.

All Individuals filing Appeals in the Bristol County Probate & Family Court are accepted by the employees of that court.

These individuals filing Appeals are younger than the petitioners and are of a different religion than the petitioners.

Petitioners were discriminated against because of their age and religion when Judge La Staiti had issued a pre-trial notice and order for parties to appear in court on June 23, 1997, at New Bedford at 9:30A.M. and they had to wait for over an hour and a half for the respondents attorneys, who violated the court order and did

not appear for the pre-trial conference.

Joseph S. Provanzano and Paul M. Derby are younger than the petitioners and are not of the same religion as the petitioners.

While on the other hand other individuals that do not appear in court, default are placed upon them.

The facts and evidence clearly shows that the petitioners are discriminated against because of their age and religion.

Judge LaStaiti should have placed sanctions against Joseph S. Provanzano and Paul M. Derby as in her own Court Order App. 9.

III. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONERS FROM BEING DEPRIVED OF THEIR CONSTITUTIONAL RIGHTS AS SET FORTH IN MASSACHUSETTS CIVIL RIGHTS ACT, M.G.L. CHAPTER 12 SECTION 111

Massachusetts Civil Rights Act, M.G.L. Chapter 12 § 111 "protects citizens from being deprived of their United States Constitutional Rights by individuals .... "

The Commonwealth of Massachusetts and its servants also deprived the petitioners of their Massachusetts Civil Rights when they deprived the petitioners of the United States Constitutional Rights **see pages 8,9,10, and 11 of this Petition for Writ of Certiorari.**

IV. CERTIORARI SHOULD BE GRANTED TO PROTECT PETITIONERS FROM BEING DEPRIVED OF THEIR RIGHT IN OBTAINING JUSTICE AS SET FORTH IN MASSACHUSETTS DECLARATION OF RIGHTS ARTICLE XI

Massachusetts Declaration of Rights Article XI; "remedy by recourse of the laws: obtaining of right and justice, completely promptly, every subject of the commonwealth ought to find a certain remedy, by have recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely and without being obliged to purchase it: completely, and without denial: promptly, and without delay...."

The petitioners had the right to obtain justice promptly and without delay, however this was not the case.

Petitioners did not obtain justice freely they were compelled to pay for something they did not receive.

Petitioners were deprived of their United States Constitutional Rights.

The Massachusetts Courts never went into the most vital issue that Edith Tabachnick was posing as an heir to the Estate of David Miller when the fact of the matter is she is not a legal heir to Estate of David Miller.

The Massachusetts Courts are stealing peoples monies under the pretense that they will receive justice.

V. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONERS' RIGHT TO APPEAL AS SET FORTH IN MASSACHUSETTS RULES OF CIVIL APPELLATE PROCEDURE RULE 3 (a)

Massachusetts Rules of Civil Procedure Rule (a) states in pertinent part: "filing the Notice of Appeal. An Appeal permitted by law from the lower court shall be taken by filing a notice of appeal with the Clerk in the lower Court."

Petitioners filed their Notices of Appeals attached App. 3 & 4.

Toni, Head Clerk refused to accept the petitioners Notices of Appeals and when petitioners Mailed their Notices of Appeals to Robert A. Peck, Register he returned them to the petitioners.

Toni, the Head Clerk and Robert E. Peck, Register are in complete defiance of the law.

The Massachusetts Supreme Court agrees that these Notice of Appeals were to be accepted by both Toni, Head Clerk and Robert E. Peck, Register "With the hope that it will eliminate confusion in the future, we take this opportunity to reiterate what we have said in other cases concerning clerks of the court or registers, (or a member of their staff) who refuse to accept for filing a Notice of Appeal tendered by a litigant. Clerks and registers, whether elected or appointed are ministerial officers of the court when it comes to the receiving the filing papers." attached App. 18.

However, the Massachusetts Supreme Court did not compensate the petitioners for the additional monies the petitioners were compelled to pay for the misconduct of these individuals.

Moreover, these individuals are continuing to refuse to accept documents from the petitioners.

June 9, 1998, Petitioner Fred Davis paid both 1998 Real Estate and water bills for the Estate of David Miller in the combined amount of $1,817.21.

Petitioner, Fred Davis at the present time has a total claim against the Estate of David Miller in the amount of $27, 594.00 for Real Estate taxes, water bills, etc.

Fred Davis brought to the Court "Fred Davis" Additional Claim Against the Estate of David Miller which included the paid Real Estate, and water bills along with an affidavit.

Again, Toni, the Head Clerk, refused to take these documents.

Fred Davis mailed these documents to Chief Justice in the Probate and Family Court Three Center Plaza Boston, Ma 02108.

Chief Justice, Sean Dunphy also returned these documents to the petitioner and would not file them.

The petitioners are senior citizens and in addition their rights were violated,along with being harassed by the Court system with malice to hurt and harm them.

The facts reveal they want to deprive them of monies and property.

VI. CERTIORARI SHOULD BE GRANTED BECAUSE THE COURT ERRED WHEN IT DENIED PETITIONERS MOTION FOR CHANGE OF VENUE

The lower court erred in law when it denied the petitioners Motion For Change of Venue Because of Local Prejudices attached App. 11 & 12.

At the time these motions were filed there were legal actions pending in the Federal Court against Judge Elizabeth O"Neill LaStaiti, Robert E. Peck and Stephen J. Hanna all are employees in the Bristol County Probate and Family.

Therefore, there are local prejudices in the Bristol County Probate and Family Court and there can not be an impartial trial.

There has not been one motion filed by the petitioners in the Bristol County Probate & Family Court that was allowed.

These prejudices were clear when the petitioners were deprived of a Continuance because of the Jewish Holiday banning them to exercise the freedom of their religion.

These prejudices also deprived petitioners witnesses because they could not appear in court because of the Jewish Holiday.

Respondent's attorney Joseph S. Provanzano opposed the Motion For Change of Venue Because of Local Prejudices which is very strange since a change of venue would be more convenient for him to travel to Cambridge rather than to New Bedford which is a round trip of approximately 160 miles

while a round trip to Cambridge is approximately 40 miles.

These prejudices are still continuing to this day when petitioners documents are being returned and notices of appeals are being returned, in spite of the Massachusetts Supreme Court clearly states documents are to be accepted.

VII. CERTIORARI SHOULD BE GRANTED TO ENFORCE MASSACHUSETTS GENERAL LAWS CHAPTER 19A § 14 CRIMES AGAINT THE ELDERLY

Massachusetts General Laws Chapter 19A § 14 **CRIMES AGAINST THE ELDERLY "FINANCIAL EXPLOITATION** states in pertinent part: "an act or omission by another person, which causes a substantial monetary or property loss to an elderly which gain would otherwise benefit the elderly" is subject to fines and a prison term.

The petitioners are elderly persons and are victims of "Financial Exploitation" by the respondent Edith Tabachnick.

Tabachnick took $250,000.00, in items belonging to the petitioner, Gorod and removed other items from the estate in the amount of over a million dollars.

Attorney Mark Berch wrote to the respondent's first attorney regarding the items that she removed from the Estate of David Miller attached App. 16, however, it was to no avail she did not return anything.

The inferior Court erred in law when it did not enforce the foregoing statute.

VIII. CERTIORARI SHOULD BE GRANTED BECAUSE ATTORNEYS JOSEPH S. PROVANZANO AND PAUL DERBY ACTED IN BAD FAITH

Massachusetts Canon Rules: Canon Rule 1 Disciplinary Rules DRI-Misconduct: (A) a lawyer shall not: (3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation (f) engage in conduct that is prejudical to the administration of justice.

Massachusetts General Laws 221 section 38 Attorney's Oath: "Your (Name) solemnly swear that you will do no falsehood, nor consent to the doing of any in Court". "So help you GOD".

Joseph S. Provanzano and Paul M. Derby for approximately seven years has filed frivolous actions in the Bristol County Courts.

Both attorneys are fully aware that the respondent is not a legal heir to the Estate of David Miller,

Provanzano and Derby have continuously, filed frivolous documents in the court that are pertaining to the same action that is now pending in the court system.

In addition, Mr. Provanzano is also continuing not to notify Gorod of his malicious acts, with the actual intent to harm and hurt Gorod.

Mr. Provanzano went before the Massachusetts Supreme Judicial Court and told the following

falsehoods: "they are pro se with a battery of attorneys behind them and Edith Tabachnick went into the house to get some clothes and she showed the bag of clothes that she took to the officer when she left, and she took a picture that no one wants"

This statement by Mr. Provanzano is a complete lie (1) she had no clothes in the petitioner's residence, (2) there was no officer in the house when she left (3) she took a picture that no one wants. Picture belongs to the Estate of David Miller and is worth over thousands of dollars.

Mr. Provanzano and Mr. Derby are covering up the facts that she broke into the residence of David Miller along with other members of what appears to be members of her religious cult and by her own admission the respondent admitted that she took items from the Estate of David Miller and gave it to others.

The facts are very clear that Mr. Provanzano and Paul Derby are engaged in a cover-up.

Attorney Berch wrote to her first attorney regarding the items that respondent Tabachnick took and who accompanied her attached App. 16

Mr. Provanzano not only told falsehoods in the Massachusetts Supreme Judicial Court he has lied in every court during this legal process.

Mr. Provanzano has admitted that he has two Complaints against him with the Massachusetts Baroverseers.

Mr. Derby has lied to the court in every

court appearance that he has made in this action.

Mr. Provanzano has slandered, harassed, abused, embarrassed the petitioners causing damage to their character causing them physical and emotional distress.

Mr. Provanzano and Paul Derby has violated the Massachusetts Canon Rules, violated the Attorney's Oath and is continuing to act in bad faith with the actual intent to mislead and deceive the Court. **SEE Groh v. Viglet 34 Ohio Law R 132 "an act done with actual intent to mislead or deceive another is an act in bad faith". SEE Hilgenberg v. Northrup 33 N.E. 786,787, 134 Ind 92 "Bad faith and fraud are synonymous".**

Mr. Provanzano and Mr. Derby because of their misconduct should be banned from practicing law through-out the United Stats of America.

IX. CERTIORARI SHOULD BE GRANTED BECAUSE BASED ON THE FACTS AND EVIDENCE JUDGES LASTAITI, MCGREGOR AND JONES ARE ENGAGED IN A CONSPIRACY TO HURT AND HARM AND DEPRIVE PETITIONERS OF THEIR RIGHTFUL INHERITANCE

Massachusetts Rules of Civil Procedure Rule 26 (a)"Parties may obtain discovery by one or more of the following methods (b) depositions oral examinations....."

Gorod, served upon Tabachnick & her attorney Notice to Appear For Deposition & Duces Tecum attached App. 8, however, she did not appear.

Gorod was not notified by respondent nor attorney.

Gorod was not given requested documents.

Gorod filed Motion to Dismiss the action Or As An Alternative Compel Edith Tabachnick To Be Deposed, Duces Tecum and Costs attached App. 12. SEE East Boston Ecumenical Coumunity, et al v. Mastrorillo 133 F.R.D. 2 (1990) "a party may not unilaterally decide not to attend a duly noticed deposition without at least first applying for a protective order.

Dismissal of an action is appropriate when plaintiff willfully failed to appear for a deposition SEE Manning v. Manning 136 Colo 380, 317, P2d 329 (1957), Evans v. Schlein Mun Ct App Dist COL 51 A2d 472 (1946), Turner v. Anderson 376 So 2d 899 (1979), Estate of Atwood 240 NE2d 451 (1068), Bergin v. Ashford 264 NE2d 266 (1970), White v. Henrotin Hospital Corp. 398 NE2d 24, Valdivia v. Chicago & North Western Transp. Co. 409 NE2d 457 (1980), Suckow v. Boone State Bank & Trust Co. 314 NW2d 421 (1982, Field v. Stauffer Publications, Inc. 578 P2d 1138 (1978), Allan v. Smith 390 So 2d 1300 (1980), Azarian v. Ettiger 435 NE2d 638 (1982), McArthur Patton Christian Assoc. v. Farm Bureau Insurance Group 270 NW2d 101 (1978), Brez v. Schmitz 248 NW2d 921 (1976), Venker v. Hyler 353 SW2d 590 (1961), Roberson v. Kilborn 40 Mev 423, 165 P220 (1917), Kalosha v. Novick 426 P2d 598 (1967), DuBois v. Iovinella Nys 2d 460. SEE Jones v. Clinton L.R-c-94 290 United States Eastern District Court of Arkansas "No one is exempt from being deposed, even though he may be president of the United States as no one is above the law. Based on the law this frivolous action filed by respondents and her attorneys should have been dismissed.

Petitioners have suffered a miscarriage of justice by the continuing conspiracy by Judges LaStaiti, McGregor and Jones.

These issues were fortified when attorneys Provanzano & Derby defied a Court Order, and no Sanctions were placed on them.

Judge McGregor is involved in another action of conspiracy.

These judges gave everything to the respondent and her attorneys in spite of the defiance of their own Court Order, allowed the respondent to pose as a heir to the estate of David Miller. While on the other hand petitioners were denied time to exercise the freedom of their religion.

X. CERTIORARI SHOULD BE GRANTED BECAUSE THE MASSACHUSETTS SUPREME COURT ERRED IN ISSUING AN INVALID DECISION AND ERRED BASED ON THE FACTS, EVIDENCE AND ORAL ARGUMENT

The inferior court's decision is invalid as it does not bear any signature or legal seal attached App. 19.

November 18, 1997, petitioners filed briefs and appendices in the Massachusetts Supreme Court.

June 18, 1998, petitioners received notices that respondent was to file briefs on June 15, 1998, signed by Jean M. Kennett, Clerk.

Massachusetts Rules are that: "enlargement of time cannot be allowed unless for good cause".

Respondent gave no reason for seven month delay to file briefs.

Therefore, the respondent should not have been allowed to file briefs and have oral argument after a delay of seven months.

The inferior court missed its mark by stating that a record was not created.

Petitioners submitted to the inferior court an appendix of the record including thirty-two documents.

In addition, the lower court requested additional documents that were furnished to them attached App. 15, therefore, a complete record was in the hands of both the single justice and the Massachusetts Supreme Court.

The inferior court admits clerks and registers are to receive and file papers attached App 18, however, Toni, Head Clerk, Robert E. Peck, and Chief Justice Mary Fitzpatrick refused to accept petitioners Notices of Appeals attached 3 and 4.

Petitioners were also denied justice and discriminated against when these individuals refused to assemble the record and forward to the Appeals Court attached 6 and 20.

MASSACHUSETTS RULES OF APPELLETE: PROCEDURE RULE 9

(a) **Assembly.** "The clerk of the lower court as soon as may be after the filing of the notice of appeal shall place together all the original papers including the exhibits filed in the lower court, together with such other papers as thereafter become a part of the record".

Petitioners compiled the record themselves and the record to the single justice, in addition documents requested and accepted by the single justice attached

App. 15.

The inferior court is compeltely off base in the issue that request for interlocutory relief, in dispute requests at least four Justices authorize the filing attached app. 19.

MASSACHUSETTS SUPREME JUDICIAL COURT
RULE 2:22 PETITIONS UNDER G.L. c. 211 § 3
"an petition seeking to invoke the general superintendency power of the court pursuant to G.L.c.211 § 3, shall name as repondents and make service upon all parties to the proceeding before the lower court. Unless otherwise ordered by the single justice, the lower court shall bereafter be treated as a nominal party which may, but need not, appear and be heard".

There is absolutely nothing in the above-cited law that requires a request for at least four Justices to authorize the filing for a single justice under M.G.L. 211 § 3. This Honorable Court can clearly see the inferior court is completely off its base and the petitioners are being discriminated.

Petitioners were discriminated becaus of their age and religion.

They were forced to pay $520.00 to obtain justice which was not true. They were deprived of their Constitutional Rights, State Constiutional Rights, and other law and statutes.

The foregoing facts and evidence substantiate the miscarriage of justice inflicted upon the petitioners when the climax occurred when they could not get a continuance for one day to exercise their religious holiday. While on the other hand the other hand respondent filed brief seven monthis late.

This is also fortified when, now they are the only ones who have to request 4 judges to authorize them before filing a petition for a single justice under M.G.L. c. 211 § 3, when no such law or statute exists for four justices to authorize.

The inferior court's handling of this action was flawed and a severe miscarriage of justice.

XI. THE PUBLIC INTEREST IS INVOLVED

The public in Massachusetts are being deprived of their rights as set forth in both the United States and Massachusetts Constitutions along with other statutes.

There are two sets of justice one for the privileged and the other for non-privileged, therefore, with two sets of justice, there is no justice at all.

CONCLUSION

WHEREFORE, petitioner, Fred Davis and Gertrude Davis Gorod, respectfully pray that a Writ of Certiorari issue to review the invalid decision of the Massachusetts Supreme Judicial Court and correct the miscarriage of justice inflicted upon the petitioners.

Respectfully submitted

Fred Davis
353 Bryant Street
Malden, Ma 02148
(781 322-8223)

Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

APP. 1

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS. PROBATE AND FAMILY COURT
DOCKET NO. 960055-PP

ESTATE OF DAVID MILLER

DEFENDANTS' COMPELLING CONTINUANCE OF HEARING

September 16, 1997, the defendant, Gertrude Davis Gorod, telephoned the Bristol County Probate & Family Court in Taunton, Massachusetts and spoke to an individual who identified herself as Gail.

The defendant, Gorod informed her that she and defendant, Fred Davis could not attend a hearing that was scheduled for October 9, 1997, at New Bedford because of the Jewish Holiday.

However, she refused to reschedule the hearing.

Moreover, this hearing is not applicable since these same issues are in the appeal process in both the Federal Court for the First District of Appeals and the United States Supreme Court.

Therefore, this action is to be continued until the appeal process is completed pending the results.

Wherefore, based on the foregoing facts the defendants request the court to allow their compelling Continuance of Hearing.

By,
S/Gertrude Davis
Gorod, heir to
the Estate of
David Miller
371 Bryant Street
Malden, Ma 02148

CERTIFIED MAIL: P 576 480 128
Mary C. Fitzpatrick, Chief Justice

CERTIFIED MAIL: P 576 480 117
Robert E. Peck, Register

THE WITHIN MOTION IS DENIED

9/25/97, Jones, Justice

APP. 3

COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT DEPARTMENT

BRISTOL, SS. DOCKET NO. 960055-PP

ESTATE OF DAVID MILLER

NOTICE OF APPEAL

Now comes Fred Davis, heir to the Estate of David Miller and aggrieved by the Court's Order denying his Motion Of Change of Venue, failure to rule on other motions and other issues, appeals the Court's Order which was made by Prudence McGregor, J. Dated July 15, 1997.

CERTIFIED MAIL:
Z 185 628 489

By,
S/ Fred Davis, Heir to
the Estate of
David Miller
353 Bryant Street
Malden, Ma 02148

CC: CHIEF JUSTICE HERBERT WILKINS
CHIEF JUSTICE OF PROBATE MARY FITZPATRICK

APP. 4

COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT DEPARTMENT

BRISTOL, SS. DOCKET NO. 960055-PP

ESTATE OF DAVID MILLER

NOTICE OF APPEAL

Now comes Gertrude Davis Gorod, heir to the Estate of David Miller and aggrieved by the Court's Order denying her Notice of Change of Venue, Notice to be Deposed, Duces Tecum and Costs and failure to rule on other motions and issues, appeals the Court's Order which was made made by Prudence McGregor, J. dated July 15, 1997.

CERTIFIED MAIL:
Z 185 628 489

By,
s/Gertrude Davis Gorod,
Heir to the Estate of
David Miller
371 Bryant Street
Malden, Ma 02148

CC: Chief Justice Herbert Wilkins
Chief Justice of Probate Mary Fitzpatrick

APP. 5

SUPREME JUDICIAL COURT
1300 NEW COURTHOUSE
BOSTON,MASSACHUSETTS, 02108

July 31, 1997

Gertrude Davis Gorod
353 Bryant Street
Malden, Ma 02148

Dear Ms. Gorod:

Your letter of July 29, 1997 to Chief Justice Wilkins about your probate matter has been referred to me. The Supreme Judicial Court is an appellate court that does not generally intervene in cases not properly before it. Since yours is a Probate and Family Court Matter, I have forwarded your letter to the Administrative Office of the Probate and Family Court Department. If you have further questions, you may write to that office at 3 Center Plaza. 9th Floor, Boston, Ma 02108.

Very truly yours,
S/ Robert S. Bloom

RSB:aw
cc: J. McNichols

August 1, 1997

Mary Fitzpatrick, Chief Justice
3 Center Plaza
Boston, Ma 02108

RE: Bristol Probate and Family Court
Taunton Docket No. 960055-PP
Motion To Compel Assemble of the Record to Appeals Court (Enclosed)

Dear Chief Justice Fitpatrick:

The Bristol Probate and Family Court is refusing to assemble the record and forward it to the Appeals Court.

Therefore, we are enclosing a copy of our Motion To Compel Assemble of the Record to the Appeals Court and are requesting your assistance in seeing that our Constitutional Rights to due process of law and equal protection of the law is protected.

Thank you for your cooperation in this matter.

Very truly yours,
S/ Fred Davis
S/Gertrude Davis Gorod

CERTIFIED MAIL:
P 576 480 065
Enc.

APP. 7

September 18, 1997

Mary C. Fitzpatrick, Chief Justice
Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department
Office of the Chief Justice
Three Center Plaza
Boston, Ma 02108

RE: Estate of David Miller Bristol County Probate and Family Court Docket No. 98-E0055-PP

Dear Mary C. Fitzpatrick, Chief Justice:

Regarding the above-cited action this action is contested as it is a frivolous action filed again, by Joseph S. Provanzano who is fully aware that the same issues are pending in the appeal process.

I am also enclosing the following document "Defendants' Compelling Continuance of Hearing".

The Bristol County scheduled this hearing on October 9, 1997, at New Bedford which is interfering with the Jewish Holiday.

Thank you for your cooperation in this matter.

Very truly yours,
S/Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

CERTIFIED MAIL:
NO. P 576 480 129

APP. 8

PROBATE AND FAMILY COURT DEPARTMENT

BRISTOL SS. DOCKET NO. 96-E0055-PP

ESTATE OF DAVID MILLER

NOTICE OF TAKING DEPOSITION OF EDITH TABACHNICK
AND DUCES TECUM

Pursuant to Rule 30 of the Massachusetts Rules of Civil Procedure you (Edith Tabachnick), are hereby ordered to appear at 10:00 A. M. on July 11, 1997, at Doris O. Wong & Associates 50 Franklin Street Boston, Massachusetts to take your deposition upon oral examination. The oral Examination will continue from day to day until completed.

DUCES TECUM

You are to bring with you the following:

(1) All correspondence, notes, memorandums, etc., that you will present as evidence at time of trial.

Plaintiff will reproduce these documents at time of deposition.

By,
Gertrude David Gorod,
Heir to the Estate of
David Miller
371 Bryant Street
Malden, Ma 02148

PRE-TRIAL AND ORDER

At such pre-trial conference, the Court will consider the simplification of the issues, the necessity of amendments to the pleadings, the prospects of settlement, or such other matters as may aid in the trial or any other disposition of the action.

At the conclusion of such pre-trial conference, an appropriate order will be entered reflecting the action taken at such conference.

All trial counsel and parties shall attend the pre-trial conference, Failure of counsel to appear at any scheduled pre-trial conference or otherwise to comply with provisions of this order will result in the composition of such sanctions as the Court may deem appropriate.

If settlement is achieved prior to or at the pre-trial conference, the pre-trial conference time may be utilized for hearing on an uncontested basis.

The case may be ordered to immediate trial on the date of the pre-trial if the court determines at the pre-trial that (a) the parties to the action will be the only witnesses, or (b) one party, through a failure to appear at the pre-trial or otherwise, will not present a case: or (c) such commencement of trial is necessary in the judge's discretion to accomplish justice.

Dated this 8th day of May 1997
S/ Elizabeth O'Neill LaStaiti First Justice

APP. 10

COMMONWEALTH OF MASSACHUSETTS

PROBATE AND FAMILY COURT DEPARTMENT

BRISTOL, ss. DOCKET NO. E0055-PP

ESTATE OF DAVID MILLER

MOTION FOR CHANGE OF VENUE FOR REASON OF LOCAL PREJUDICES

Gertrude Davis Gorod, heir to the Estate of David Miller requests that there be a change of venue in the above-cited action because of local prejudice and there are pending action in the United States Court and the Massachusetts Supreme Court against Judge Elizabeth O'Neill LaStaiti and other employees in the Bristol County Court system.

Therefore, there can not be an impartial trial in the above action in the Bristol County in which said proceedings are now pending.

Wherefore, Gertrude Davis Gorod, heir to the Estate of David Miller moves that this Honorable Court should order said proceedings to be removed to another county for trial, said county should be the Middlesex County Probate Court in Cambridge.

By,
s/ Gertrude Davis Gorod,
Heir to the Estate of David Miller

APP. 11

COMMONWEALTH OF MASSACHUSETTS

PROBATE AND FAMILY COURT DEPARTMENT

BRISTOL, SS DOCKET NO. 96-E0055-PP

ESTATE OF DAVID MILLER

MOTION FOR CHANGE OF VENUE FOR REASON OF LOCAL PREJUDICES

Fred Davis, heir to the Estate of David Miller requests that there be a change of venue in the above-cited action because of local prejudice and there is pending action in the Massachusetts Supreme Court against Judge Elizabeth O'Neill La Staiti and other employees in the Bristol County.

Therefore there can not be an impartial trial in the above action in the Bristol County in which said proceedings are now pending.

Wherefore, Fred Davis, heir to the Estate of David Miller moves that this honorable Court should order said proceedings to be removed to another county for trial, said county should be the Middlesex County Probate Court in Cambridge.

By,
S/ Fred Davis, Heir to the Estate of David Miller

APP. 12

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS. PROBATE & FAMILY DEPARTMENT DOCKET NO. 96-E0055-PP

ESTATE OF DAVID MILLER

GERTRUDE DAVIS GOROD'S MOTION TO DISMISS THE ACTION OR AS AN ALTERNATIVE COMPEL EDITH TABACHNICK TO BE DEPOSED, DUCES TECUM AND COSTS

Now comes Gertrude Davis Gorod, heir to the Estate of David Miller and moves the court to dismiss the action, due to the fact, that Edith Tabachnick did not appear for her deposition nor was Gertrude Davis Gorod notified that she would not attend.

As alternative, Edith Tabachnick be compelled to be deposed, duces tecum enforced and costs of the deposition.

MEMORANDUM IN SUPPORT OF GERTRUDE DAVIS GOROD'S MOTION TO DISMISS THE ACTION OR AS AN ALTERNATIVE COMPEL EDITH TABACHNICK TO BE DEPOSED, DUCES TECUM AND COSTS

June 30, 1997, Edith Tabachnick and her attorney Joseph S. Provanzano were duly notified of Notice of Taking Deposition of Edith Tabachnick and Duces Tecum Exhibit A attached hereto: **(SEE APP. 8).**

July 8, 1997, Gertrude Davis Gorod, received a telephone call from Donna of the Doris O. Wong Professional Court Reporting Service informing

her that Provanzano & Associates cancelled the deposition of Edith Tabachnick which was scheduled for July 11, 1997, without giving any reason or cause.

Gertrude Davis Gorod was not notified of this cancellation by Provanzano.

This is a continuation of harassment inflicted upon Gertrude Davis Gorod, by Edith Tabachnick and her attorneys and the continuing of obstruction of justice.

The Court can clearly see first they file a motion objection to the portion of Duces Tecum than they don't appear for the deposition.

Dismissal of an action is appropriate when one fails to appear for a deposition: **MANNING V. MANNING** 136 Colo 380, 317, P 2d 329 (1957), **EVANS V. SCHLEIN** Mun Ct App Col 51 A2d 472 **TURNER V. ANDERSON** 376 So 2d 899, **ESTATE OF ATWOOD** 240 NE 2d 451, **BERGIN V. ASHFORD** 264 NE 2d 266, **WHITE V. HENROTIN HOSPITAL CORP.** 398 NE 2d 24, **VALDIVIA V. CHICAGO & NORTH WESTERN TRANSP. Co.** 409 NE2d 457, **SUCKOW V. BOONE STATE BANK &** 314 NW2d 412, **FIELD V. STAUFFER PUBLICATIONS** 578 P2 1138, **ALLAN V. SMITH** 390 So 2d 1300 **AZARIAN V. ETTINGER** 435 NE 2d 638, **MCARTHUR PATTTON CHRISTIAN ASSOC. V. FARM BUREAU INSURANCE GROUP** 270 NW 2d 101, **BREZA V. SCHMITZ** 248 NW 2d 921, **VENKER V. HYLER** 353 SW 2d 590, **ROBERSON V. KILBORN** 40 Nev 423, 165 P 220, **KALOSHA V. NOVICK** 426 P2d 598, **DUBOIS V. IOVIN-**

ella 222 Ny S2d 460.

This action must be dismissed or as an alternative Edith Tabachnick is to be deposed along with duces tecum and costs.

Therefore, based on the foregoing facts and evidence Gertrude Davis Gorod moves the court to allow her motion.

By,
s/ Gertrude Davis Gorod
Heir to the Estate of
David Miller

APP. 15

STAMPED
RECEIVED AUG.18, 1997
Appeals Court

COMMONWEALTH OF MASSACHUSETTS
APPEAL COURT

SUFFOLK, SS. AC NO. 97-J-580

BRISTOL, SS. PROBATE & FAMILY COURT
DOCKET NO. 960055-PP

ESTATE OF DAVID MILLER

FRED DAVIS

GERTRUDE DAVIS GOROD,
APPELLANTS

V.

EDITH TABACHNICK,
APPELLEE

REFILING OF
PETITION FOR APPELLATE REVIEW BEFORE A SINGLE JUSTICE
INCLUDING DOCUMENTS REQUESTED BY THE COURT

ON APPEAL FROM THE BRISTOL COUNTY PROBATE & FAMILY COURT

Gertrude Davis Gorod Fred Davis

APP. 16

Mark F. Berch
Attorney at Law
45 Braintree Hill Office Park
Suite 201
Braintree, Ma 02184
(617) 843-6443

March 26, 1990

David T. Gay, Esq.
Gay and Gay
73 Washington St.
Taunton, Ma 02780

In re: Estate of David Miller

Dear Mr. Gay:

With regard to the above matter I am requesting that your client Edith Tabachnick provide my office with keys to the real estate in Raynham and the keys, title, and registration to the motor vehicle.

Additionally for the items that Ms. Tabachnick has stated that she removed from the property after Mr. Miller's death, I require a full accounting and itemization of everything.

I would like to know the complete name and address of all persons who accompanied your client into the house when these items were removed. At this time I am attempting to collect the estate's property and the cooperation of your client is essential for me to achieve this purpose.

Kindly contact my office at your earliest convenience to further discuss this matter.

Very truly yours,
s/Mark F. Berch

SJC-07583

GERTRUDE DAVIS GOROD & another 1/ vs. EDITH TABACHNICK

July 17, 1998.

Supreme Judicial Court, Superintendence of inferior court. Practice, Civil, Record. Clerk of Court

The petitioners, Fred Davis and Gertrude Davis Gorod, appeal from judgment of a single justice of this court denying without a hearing their requests for relief under G.L.C. c. 211, § 3. We affirm. 2/

In seeking relief under G.L.c 211 § 3, it was the petitioners' burden to create a record-- not merely a allege but to demonstrate, i.e., to provide copies of the lower court docket entries and any relevant pleadings, motions, order, recordings transcripts, or other parts of the lower court record necessary to substantiate their allegations-- showing both a substantial claim of violation of a substantive right and that the violation could have not been remedied in the normal course of a trial and appeal or by other available means. Matthews v. D'Arcy, 425 Mass. 1021, 1022 (1997). Sinai v. Plymouth Div. of the Probate & Family Court Dep't 425 Mass 1021.

1/ Fred Davis. The petitioners claim to represent the estate of David Miller.

2/ Some if not all of the relief sought by the petitioners concerned interlocutory rulings in the Probate Court, yet the petitioners did not proceed in accordance with S.J.C. Rule 2:21, 421 Mass 1303 (1995). This by itself is a reason not to disturb the single justice's judgment.

Hines v. Commonwealth 425 Mass. 1013, (1997). Barnoski v. Commonwealth, 413 Mass. 1007 (1992). Allen v. Christian, 408 Mass. 1007 1008 (1990. The petitioners did not create such a record and so the single justice correctly denied their petition. It is of no consequence that the petitioners were acting pro se.

With the hope that it will eliminate confusion in the future, we take this opportunity to reiterate what we have said in other cases concerning clerks of the court or registers (or a member of their staff) who refuse to accept for filing a Notice of Appeal tendered by a litigant. Clerks and registers, whether elected or appointed, are ministerial officers of the court when it comes to receiving the filing papers. See Donahue v. Secretary of the Commonwealth, 403 Mass. 363, 368-369 (1988). In the absence of an order from a judge, they may not refuse to accept a Notice of Appeal, even if they believe that no appeal is available or that the notice is untimely or otherwise defective. Morales v. Commonwealth, 424 Mass. 1010, 1011 (1997). Callahan v. Commonwealth 416 Mass. 1010-1011 (1994). Burnham v. Clerk of the First Dist. Court of Essex, 353 Mass. 466, 467-468 (1967).

Of course not every filing of a Notice of Appeal requires the assembly of a record. If a dispute arises as to whether the record must be assembled in a given case, the litigant who seeks to appeal my move for an order compelling the the assembly, and the matter must then be resol-

ed by a judge. Where (as apparently happened here) a litigant seeks to appeal from an interlocutory order, there is no right to an immediate appeal, no assembly of a record is requred. That is a legal determination for the judge to make, subject to appellate review. See the discussion in Mancuso v. Mancuso 10 Mass. App. Ct. 395 (1980).

The judgment of the single justice is affirmed. The defendant's request for double costs is denied. Finally, we order that neither the clerk of this court for the Commonwealth nor the clerk of the county court accept any further filing from the petitioners in the nature of a request for interlocutory relief in this dispute, unless at least four Justices authorize the filing. The Probate Court is free to consider fashioning its own order with respect to further filings in that court.

So Ordered

NOTE: THERE ARE NO SIGNATURES FROM ANY JUDGE/ JUDGES WHO MADE THE ABOVE ORDER. NO LEGAL SEAL

Fred Davis, pro se
Gertrude Davis Gorod, pro se
Joseph S. Provanzano for the defendant

COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT DEPARTMENT

BRISTOL, ss. DOCKET NO. 960055-PP

ESTATE OF DAVID MILLER

MOTION TO COMPEL ASSEMBLE OF THE RECORD TO THE APPEALS COURT

Now comes Fred Davis and Gertrude Davis Gorod, heirs to the Estate of David Miller and moves the Court to Compel the Assemble of the Record and forward it forthwith to the Appeals Court.

July 23, 1997, Davis and Gorod filed their Notices of Appeals with the Taunton Probate and Family Court certified mail #Z 185 628 489 and copies were mailed to both Chief Justice Herbert Wilkins and Chief Justice of Probate Mary Fitzpatrick.

We were informed that the court will not forward the record to the Appeals Court.

Therefore, we are filing a Motion To Compel Assemble of the record and forward to the Appeals Court.

Wherefore, this record is to be forward to the Appeals Court forthwith.

By,

Fred Davis,
Gertrude Davis Gorod,
Heirs to the Estate
of David Miller

CC: CHIEF JUSTICE OF PROBATE,
Mary Fitzpatrick
P 576 480 065